



The Rt Hon Kenneth Clarke QC MP
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My ref:

Your ref:

17 June 1987

Dear Kenneth

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LOCAL GOVERNMENT LEGISLATION AND THE 'LOCAL EMPLOYMENT' ISSUE

Thank you for your letter of 16 June.

As you know, I was quite happy to include an exemption for local labour conditions when we discussed the contracts legislation in H. Subsequently it has been clearly established that such conditions fall foul of EC legislation. I could not, therefore, include a specific exemption for such conditions.

As you say, deletion of the words "the composition of" in Clause 17(5)(a) would mean that the Bill did not stop local labour conditions in local authority contracts. But it would also mean that the provisions would not stop authorities including questions about the composition of contractors' workforces in questionnaires, or including conditions relating to this in contracts. As you say some actions which authorities might take in this field might be illegal under the existing law. I fear that many others would not be, but that is academic given the reluctance of contractors to bring legal challenges. The effect of deletion of those words would be that contractors continued to receive vast questionnaires as authorities' contract compliance units continued to investigate sexual discrimination, disabled employment, apprentice ratios etc. I also fear that authorities would exploit the loophole in new ways - for example to look at gay/lesbian employment practices, to seek to control the proportion of the workforce who had previously worked on Cruise missile sites or crossed picket lines, and so on.

Against these drawbacks, I do not see what you would have gained. Local labour conditions would still fall foul of the EC directive. Given the previous publicity about local labour we would surely be asked about the Bill's effect in this field during its passage, and if we failed to mention the EC problem we would risk being accused of misleading Parliament. The CBI have already asked my Department how local labour conditions can be squared with the EC directives.

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I fully support your policy of trying to secure the maximum benefit for local residents from our urban policy expenditure. I would be willing to consider any other means outside the Bill by which that policy can be pursued - could you not, for example, use training to buy the local employment element into particular urban projects? But I am afraid that I could not agree to an amendment which would seriously affect our contracts provisions, without overcoming the EC problem which exists whether we legislate on contracts or not.

I am sending copies of this letter to the Prime Minister, the Lord President, other members of H, the Foreign Secretary, the Secretary of State for Trade and Industry, the Attorney General, Sir Robert Armstrong and First Parliamentary Counsel.

Nicholas Ridley

NICHOLAS RIDLEY





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Chancellor of the Duchy of Lancaster
The Rt Hon Kenneth Clarke QC MP

16 June 1987

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
LONDON
SW1P 3EB

NBRM.

Dear Nick.

LOCAL GOVERNMENT LEGISLATION AND THE 'LOCAL EMPLOYMENT' ISSUE

I resume our correspondence on this subject, realizing that timing is now quite urgent.

We both knew that the job of making two policies compatible would be quite difficult. I appreciate the efforts you have made to change your Bill's structure so as to list individual prohibitions. The only remaining issue which prevents our reaching agreement, upon which H Committee made the progress of the Bill conditional, is the reference, in Draft Clause 5(a), to the composition of a contractor's workforce.

That reference needs to be removed if my policy aim is to be achieved. I understand you might be concerned that a loophole would be created, but I cannot see a real problem. Any attempt by a local authority to specify racial or gender quotas would be illegal under existing UK legislation. If an authority were to attempt something really fanciful it would be caught easily under the existing common law test of reasonableness.

The Bill's purpose is important, and we both subscribe to it. Equally, we are clearly bound by H to encourage better targeting of Government spend on inner city residents. I believe that the small amendment I am suggesting, namely to excise the words "the composition of" in Draft Clause 5(a), would meet our needs.

JFLAKF



I am copying this letter to the Prime Minister, the members of E(LA) and E(LF), the Lord Chancellor, the Foreign Secretary, the Lord Privy Seal, the Attorney General, the Secretary of State for Northern Ireland, First Parliamentary Counsel, the Chief Whip and Sir Robert Armstrong.

A handwritten signature in black ink, appearing to be 'K. Clarke', written in a cursive style.

KENNETH CLARKE

JFLAKE

cc BE



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The Rt Hon Kenneth Clarke QC
Paymaster General
Department of Employment
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My ref:

Your ref:

8 June 1987

NBGM

Dear Kenneth

LOCAL GOVERNMENT LEGISLATION AND THE "LOCAL EMPLOYMENT" ISSUE

Thank you for your letter of 29 May ^{at 11ap} about the interaction of my proposals to outlaw non-commercial conditions in local authority contracts and the use of local labour.

The legal advice we have received is that a condition requiring a contractor to employ a proportion of locally recruited labour in his workforce would be in contravention of the EC Public Works and Supplies Directives. It follows that, despite my willingness in principle, I cannot provide in my legislation for an exemption for such a practice. Equally the Government is in no position publicly to promote or encourage such arrangements.

I am clear that it would not be sufficient to rely on the EC Directives to prevent the whole range of specious conditions with which contractors are confronted by some authorities. We have already recognised that in principle these are illegal under the common law but we are now committed publicly to making express provision to deal with the problem.

Following further discussions between our officials, I think there is now a common view on the way the proposed legislation has been drafted. The approach is to list what are non-commercial matters, and therefore prohibited. Among them is the composition of a contractor's workforce which effectively prohibits a local labour condition. There can be no question of dropping this provision since to do so would leave authorities free to dictate to contractors on who they should or should not employ. We cannot afford to create such a loophole, particularly as the only reason for doing so would be to allow authorities to impose conditions which would contravene the EC Directives.

There is of course no express mention of prohibiting a local labour condition and so the issue is not thrown into relief. If we are asked during the passage of the Bill whether local labour conditions are permitted we would have to refer to the EC Directives in order to indicate that whatever our sympathies our hands were tied. We would also point out that there is nothing to prevent an authority including a proportion of small firms on a tender list, and as such firms might be expected to employ a majority of local labour, the policy objective could well be achieved.

I hope you will agree that in the light of clear legal advice there is no alternative to the approach we are adopting and that the way the Bill is drafted goes as far as is practicable to meeting your concern. On present plans the Bill is to be introduced immediately after the Queen's Speech. If any problems remain we shall need to put them to colleagues very quickly.

I am copying this letter to the Prime Minister, the members of E(LA) and E(LF), the Lord Chancellor, the Foreign Secretary, the Lord Privy Seal, the Attorney General, the Secretary of State for Northern Ireland, First Parliamentary Counsel, the Chief Whip and Sir Robert Armstrong.

I still see no objection to your using the
 "nominate subcontractor" solution to enable local
 labour to be used.

NICHOLAS RIDLEY

Yours
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cc BG



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nbpm

The Rt Hon Nicholas Ridley AMICE
Secretary of State for the Environment
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29 May 1987

N. Ridley

LOCAL GOVERNMENT LEGISLATION AND THE "LOCAL EMPLOYMENT" ISSUE

Willie's letter of 13 May mentions the local employment issue that is still unresolved in your proposed local government legislation. I entirely accept his point that we must move to sort this out quickly after the election.

I need not rehearse again the importance which I attach to encouraging linkage in inner city areas between publicly-funded contracts and the training and employment of local people. You and other colleagues have always accepted the desirability of this and we have accepted it as Government policy. When you brought policy proposals to H Committee, your draft clauses did indeed meet the case.

We then fell foul of the EC Public Works Directive. Lawyers seem to agree that a declaratory provision in the proposed legislation to encourage local employment would contravene the Directive. By the same token, they also agree that the contract compliance measures which we dislike and are the target of your proposed clauses are already in equal contravention of the Directive. This of course implies that the legislation is superfluous and that energetic enforcement of existing Community law could achieve the purpose. I have argued this at 'H' meetings but we decided that a clear restatement of the law might make contractors and Government a little more courageous. I was prepared to accept that there was no harm in making these practices illegal a second time in a different way.



Our precise difficulty arises because of the choice you made between the alternative strategies of 'listing what is forbidden' and 'listing what is allowed'. By choosing the latter course, you threw into sharp relief the issue of the Public Works Directive. My firm view is that the draft legislation, should you decide to pursue it, will need to revert to listing prohibitions, such as partisan political considerations, extraneous foreign policy issues and so on. You were worried about the difficulties of debating the merits of these specific issues in a pre-election session of Parliament but I assume that there would be no difficulty in taking such a list of proscribed practices and terms through Parliament after an election.

We will obviously need to look at the issues again in H Committee if difficulties arise. I hope you agree however that the circumstances have now changed and we can produce a suitable clause for the new session, drafted in a way which does not bring two Government policies into conflict.

I am copying this letter to the Prime Minister, the members of E(LA) and E(LF), First Parliamentary Counsel and Sir Robert Armstrong.

KENNETH CLARKE

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